

**Memorandum of Agreement
Between (MOA)
Department of Environmental Conservation (DEC)
and
Alaska Department of Fish & Game (ADF&G)**

Purpose: The signatory agencies agree to cooperatively review and use DEC's Guidance for *Mitigation Plans for the Authorization of Mixing Zones in Spawning Areas* (mitigation guidance) when reviewing a proposed mixing zone mitigation plan. The mitigation guidance can be found in Appendix B of the *Implementation Guidance: 2006 Mixing Zone Regulation Revisions*. The state's mixing zone regulations (18 AAC 70.240) direct the DEC to consult with ADF&G on mixing zones proposed in spawning areas and was written with the assistance of ADF&G.

The mitigation guidance provides DEC permittees and ADF&G biologists with information on how to consistently review mitigation plans submitted under 18 AAC 70.240(g) of the mixing zone regulations. The guidance is based upon mitigation practices used by ADF&G and DEC. These provisions have been developed by DEC in support of its submittal package to EPA.

Authority: This MOA is entered into under the following laws and agency authorities.

- a) DEC - AS 46.03.020, 18 AAC 70.240
- b) ADF&G - AS 16.05.050, 5 AAC 95.011, 5 AAC 95.900

The mitigation guidance is a minimum standard for mixing zone mitigation. ADF&G may impose more restrictive conditions on mixing zones under their individual statutory authorities.

Benefits to Each Participant: Both agencies benefit from the agreement as it ensures that all staff reviewing mitigation plans follow guidelines that protect freshwater spawning areas. The MOA will create a consistent approach.

Implementation: DEC and ADF&G recognize that fish spawning areas are essential to ensuring sustainable fish populations and must be properly protected.

For the purpose of implementing the mixing zone regulations found in 18 AAC 70.240 (e)-(j), spawning areas are considered to be areas within lakes, streams, rivers, or other flowing fresh waters that offer suitable habitat for fish spawning and where spawning adults, incubating eggs, or alevins are present. In identifying and managing spawning areas under these regulations, the temporal and spatial aspects of spawning habitat and spawning fish, egg, and alevin presence, the proposed activity, and potential impacts will be considered in such a manner that the continued long-term use and availability of spawning in the waterbody is properly protected.

Except as provided under 18 AAC 70.240, mixing zones are prohibited in spawning areas for anadromous Pacific salmon including chinook, coho, pink, chum, and sockeye salmon (18 AAC 70.240(e)). Except as provided under 18 AAC 70.240(g) and (i), mixing zones are also prohibited in spawning areas for Arctic grayling, northern pike, lake trout, brook trout, sheefish, burbot, landlocked coho, Chinook or sockeye salmon, and anadromous or resident rainbow trout, Arctic char, Dolly Varden, whitefish or cutthroat trout (18 AAC 70.240(f)).

Mitigation plans may only be used to allow an exemption to the prohibition of mixing zones in spawning areas of anadromous and resident fish listed in 18 AAC 70.240(f), and may not be used to authorize a mixing zone in spawning areas of anadromous Pacific salmon.

The mitigation guidance directs DEC to consult with ADF&G biologists on mixing zone applications that could potentially be in spawning areas. ADF&G is responsible for waters in the *Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes* and special areas established under AS 16.20. If a mixing zone is to be authorized in a spawning area of these waters, mitigation plan approval will be required from DEC and ADF&G. For all other waters, mitigation plan approval is required from DEC, in consultation with ADF&G.

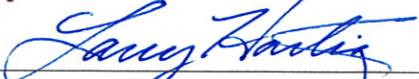
DEC is responsible for the final approval and implementation of all approved mixing zone applications.

A. Funding and Support: This MOA does not require the signatory agencies to commit additional funding to carry out the purposes of this agreement. This MOA expresses agency commitment and support to work cooperatively in exercising existing laws and regulations to carry out the purposes of the agreement.

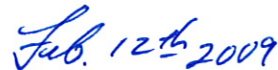
B. Review, Changes, or Termination to this Agreement: This MOA will remain in effect until amended or terminated. Each party, upon (30) days written notice to the other parties, may amend or terminate their participation in this agreement.

C. Signatory Agencies: This agreement will go into effect on the date the agreement is signed by and between the agencies listed under this section.

Department of Environmental Conservation



Larry Hartig, Commissioner

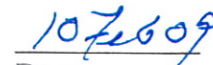


Date

Alaska Department of Fish and Game



Denby S. Lloyd, Commissioner



Date